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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68824; File No. SR-NSX-2013-03)

February 4, 2013

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fee and Rebate Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2013, National Stock Exchange, Inc. (“NSX<sup>®</sup>” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(a) to: (1) make a clarifying change to Section I; and (2) amend Section III to provide a rebate of \$0.0013 per share to Equity Trading Permit (“ETP”) Holders<sup>3</sup> for Double Play Orders<sup>4</sup> that are executed at or above \$1.00 on an away Trading Center.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NSX Rule 1.5 defines the term “ETP” as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s Trading Facilities.

<sup>4</sup> NSX Rule 11.11(c)(10).

<sup>5</sup> NSX Rule 2.11. A Trading Center is defined as “other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communication networks or other brokers or dealers.”

The text of the proposed rule change is available on the Exchange's website at [www.nsx.com](http://www.nsx.com), at the Exchange's principal office, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section I of its Fee Schedule to: (1) make a clarifying change to Section I of the Fee Schedule; and (2) amend Section III of the Fee Schedule to provide a rebate of \$0.0013 per share to ETP Holders for Double Play Orders that are executed at or above \$1.00 on an away Trading Center.

**Clarifying Change**

Under Section I of the Fee Schedule, the Exchange currently charges ETP Holders that do not execute at least 50,000 shares of added liquidity in a month a per share fee of \$0.0030 for any marketable order that removes liquidity in the Exchange's automatic execution mode of interaction ("Auto-Ex Mode").<sup>6</sup> ETP Holders that execute more than 50,000 shares of added liquidity per month in Auto-Ex Mode are eligible for fees and rebates under either the Variable

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<sup>6</sup> Under Auto-Ex Mode the Exchange matches and executes like-priced orders in accordance with the process described in NSX Rule 11.13(b)(1).

or Fixed Fee Schedules under Section I. Endnote number three (3) in the Fee Schedule currently states that “Fixed Fee Schedule” will apply to each ETP Holder unless the ETP Holder elects to adopt the “Variable Fee Schedule” by sending an email indicating this preference to

[NSXTrading@NSX.com](mailto:NSXTrading@NSX.com) prior to 4:00pm EST on the first trading day of the calendar month.

Rather than including this option in an endnote, the Exchange proposes to move this endnote to Section I so that ETP Holders are more easily made aware of this alternative and how to elect the “Variable Fee Schedule.” The Exchange also proposes to modify that language under Section I to explicitly state that ETP Holders that execute at least 50,000 shares of added liquidity per month would be subject to the “Fixed Fee Schedule,” unless they elected the “Variable Fee Schedule” and notified the Exchange as described above. The Exchange simply proposes to clarify the existing volume eligibility requirements and does not propose any changes to those standards.

### **Double Play Order Rebate**

The Exchange also proposes to provide ETP Holders a rebate of \$0.0013 per share for Double Play Orders that are executed at or above \$1.00 on an away Trading Center. The Double Play Order is a market or limit order that instructs the System<sup>7</sup> to route the order to a specified away Trading Center(s) as approved by the Exchange from time to time.<sup>8</sup> The order will not be exposed to the NSX Book<sup>9</sup> before being routed to a specified destination or destinations. An

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<sup>7</sup> Under NSX Rule 1.5, the term “System” is defined as “the electronic communications and trading facility . . . through which orders of [ETP Holders] are consolidated for ranking and execution.”

<sup>8</sup> NSX Rule 11.11(c)(10).

<sup>9</sup> Under NSX Rule 1.5, the term “NSX Book” is defined as “the System’s electronic file of orders.”

order that is not executed in full after routing away would return to the Exchange, receive a new timestamp, and be processed in the manner described in NSX Rule 11.14.(a).

Under Section III of the Fee Schedule, the Exchange charges ETP Holders for orders that are routed away and executed on another Trading Center a per share fee of \$0.0030 for securities priced at or above \$1.00 or 0.30% of the order's notional value for securities priced below \$1.00. Instead of the existing fee for routed orders, the Exchange now proposes to provide ETP Holders a rebate of \$0.0013 per share for Double Play Orders that are priced at or above \$1.00 and executed on an away Trading Center. Any portion of a Double Play Order that is not executed in full after routing away and returned to the Exchange will not be eligible for the proposed rebate. The unexecuted portion of the Double Play order is, instead, subject to the existing fee structure under Schedules I of the Fee Schedule or the current fee of \$0.0030 per share under Section III of the Fee Schedule if subsequently routed to an away Trading Center in accordance with Exchange Rule 11.15(a)(ii) after exhausting all eligible orders resting on the NSX Book and not as part of the original Double Play Order instructions. The Exchange does not propose to amend the fee for securities priced below \$1.00.

The Exchange believes the proposed rebate will increase liquidity by encouraging ETP Holders to use Double Play Orders since this order type provides an additional way to access liquidity on other market centers. Increased use of the Double Play Order should also increase liquidity at the Exchange since any unexecuted portion is returned to the NSX Book.

#### **Operative Date and Notice**

The Exchange will make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on February 1, 2013. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues,

fees, assessments and charges of the Exchange” through the issuance of an Information Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange’s website ([www.nsx.com](http://www.nsx.com)).

## 2. Statutory Basis

The Exchange believes that the proposed rebate for Double Play Orders routed away and executed on another Trading Center is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934<sup>10</sup> (the “Act”), in general, and Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is reasonable and equitably allocated amongst ETP Holders because all ETP Holders are eligible to submit (or not submit) these types of orders, and may do so at their discretion during the course of the month. The Exchange notes that ETP Holders using the Double Play Order will receive a rebate rather than being charged the Exchange’s standard fees for orders routed away to other Trading Centers. The rebate for Double Play Orders is a reasonable method to increase liquidity by encouraging ETP Holders to use Double Play Orders since this order type provides an additional way to access liquidity on other market centers. Increased use of the Double Play Order should also increase liquidity at the Exchange since any unexecuted portion is returned to the NSX Book. Furthermore, the Exchange believes that the proposed rebate for Double Play Orders is consistent with the provisions of Section 6(b)(5) of the Act,<sup>12</sup> because it is not unfairly discriminatory amongst ETP Holders. As stated above, ETP Holders are eligible to submit (or not submit) these types of orders, and may do so at their discretion during the course of the month.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

Lastly, the Exchange believes that the proposed clarifications to Section I of the Fee Schedule are consistent with the provisions of Section 6(b) of the Act,<sup>13</sup> in general, and Section 6(b)(4) of the Act,<sup>14</sup> in particular, in that is reasonable because these changes clarify to ETP Holder what the eligibility requirements are for receiving the Fixed Fee Schedule and how to notify the Exchange if they chose to elect the Variable Fee Schedule under Section I. The Exchange does not propose to change the existing eligibility volume requirements.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. ETP Holders using the Double Play Order will receive a rebate rather than being charged the Exchange's standard fees for orders routed away to other Trading Centers. The rebate is designed to increase liquidity by encouraging ETP Holders to use Double Play Orders which should also increase liquidity at the Exchange since any unexecuted portion is returned to the NSX Book. As stated above, the Exchange operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4.<sup>16</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2013-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 17 CFR 240.19b-4.

All submissions should refer to File Number SR-NSX-2013-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to



make available publicly. All submissions should refer to File Number SR-NSX-2013-03, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).